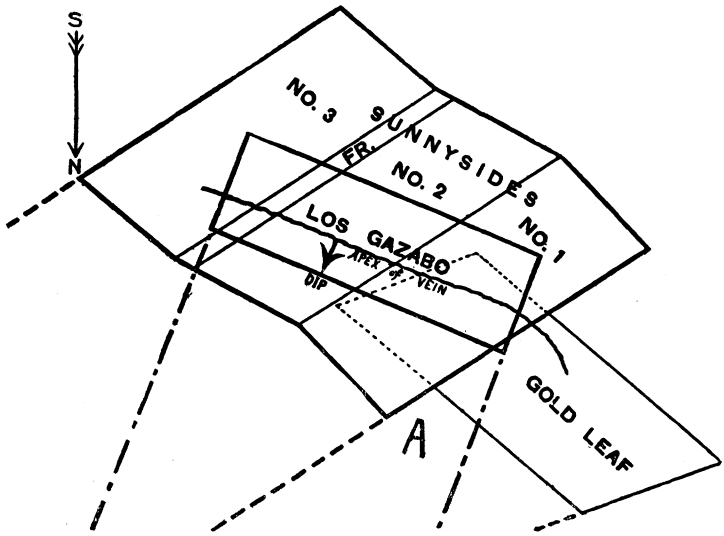
tween the conflicting locations, and to show which locations by virtue of seniority were entitled to the conflict area. This was held not to be an attack on the patent, as plaintiff contended, but was merely the construing of an ambiguous patent. "So far as the surface conveyed by the group patent is concerned it makes no differernce, but when it comes to extralateral rights, as in this case, it becomes of the greatest importance which particular grant [of the conflict area] carries the surface including the apex." The diagram illustrates the importance to the owners of the Gold Leaf and other outlying claims of



a determination of whether the Los Gazabo claim is entitled to an extralateral right or whether this right belongs to the Sunnyside claims exercised between their side-end lines produced. The question of priority was resolved in favor of the Sunnyside locations, which were held to be valid existing locations when the Los Gazabo location was later placed across them, and hence that the Los Gazabo claim had no extralateral right. W. E. C.

Municipal Corporations—Franchises—Extent of City's Authority.—We have already noted [1] one effect of the amendment in 1911 of Section 19, Article XI, Constitution of California. In the case of Ex parte Russell,[2] it was held that before a gas company could extend its mains

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[1] California Law Review (Jan., 1913), Vol. 1, p. 176.

[2] Ex Parte Russell (Sept., 1912), 44 Cal. Dec. 352, 126 Pac. 875.

in the City of Los Angeles it must obtain a franchise from the city, and that it had acquired a state franchise under the old constitutional section only in that portion of the streets it had already occupied. The District Court of Appeal for the First District has recently carried this doctrine a long step further in the case of Lukrawa v. Spring Valley Water Company.[3] A group of residents of an isolated section of San Francisco, whom the Spring Valley Water Company had refused to serve, were denied a writ of mandamus directing the water company to extend its mains so as to serve them. The court recognized that it could ordinarily mandamus a public service company to extend its facilities so as to serve a consumer within the field it had undertaken to serve,[4] and it held that the field of service of the water company was all of San Francisco. But the court interpreted the Russell case to the effect that the water company must secure a franchise from the city before it could extend its mains to the applicants, and held that it could not mandamus the company to secure a franchise, because the question of granting it rested within the discretion of the city. To thus thwart the will and interest of a section of the city's inhabitants is a strange working out of an amendment devised to permit the popular control of public utilities.

But if the doctrine of the case is right the results will be still more far reaching. The charter of San Francisco makes no provision for granting franchises to water and gas companies to use the streets; for the charter was framed with a view to Section 19, Article XI, as it stood prior to 1911, under which such companies had a state franchise to use the streets. This would, if the granting of the franchise is essential, mean that San Francisco cannot, if it so desires, grant the application of such companies to extend their mains, until either the charter or the constitution are amended, for a city's power to grant franchises is limited by the terms of its charter and the general laws. The Franchise Act of 1905,[5] and Political Code Sections 4410-4414 cannot apply, because under Section 19, Article XI they could not, when made, constitutionally include such utilities, and their operation cannot be extended by the subsequent amendment of the constitution.[6] The apparent result of this decision, if it is correct, is to prevent any extensions of service by gas or water companies in San Francisco or other cities having similar charters, during the period necessary to

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[3] (Dec., 1912), 15 Cal. App. Dec. 793.

[4] 1Wyman on Public Service Corporations, 793; Haugen v. Albine Light & Water Co. (1891), 21 Ore. 411, 28 Pac. 244, 14 L. R. A. 424; People v. Suburban Water Co. (1899), 56 N. Y. Supp. 365; State v. Citizens' Tel. Co. (1901), 61 S. C. 83, 39 S. E. 257, 55 L. R. A. 139; Bothwell v. Consumers' Water Co. (1907) 13 Id. 568, 92 Pac. 533; Cox v. Malden & M. Gas Co. (1908), 199 Mass. 324, 85 N. E. 180; Rea v. Kansas City Long Dist. Tel. Co. (1912), (Kan.) 125 Pac. 27.

[5] Statutes 1905, p. 777.

[6] Banaz v. Smith (1901), 133 Cal. 102, 65 Pac. 309; Re Rahrer (1890), 43 Fed. 556.

pass an amendment to the constitution. Los Angeles, if the decision of the District Court of Appeal remains the law, is fortunate in that its charter is so worded [7] that it can grant such franchises in the streets.

If the Supreme Court shall affirm this case, there are three proposed constitutional amendments which would relieve the situation thus created. One, approved by City Attorney Long of San Francisco, removes from Section 19, Article XI the words "under its organic law," [8] thus allowing the supervisors by ordinance to prescribe conditions in the nature of franchises. Another amendment would meet the situation by allowing the city to prescribe conditions under "general law" as well as under its "organic law"; [9] the legislature could then give relief by passing an act equivalent to the Franchise Act of 1905. The third, and more far-reaching, amendment so changes Section 6, Article XI that a city shall have power to make laws and regulations in respect to municipal affairs subject only to the restrictions of its charter.[10] This would make a city charter a limitation on a general grant of power and would do away with the list of enumerated powers as we now find them.

In reaching its conclusion in the Lukrawa case the court based its decision entirely on the Russell case, regarding it as directly in point. But it is submitted that the Supreme Court there excluded from consideration just such a situation as San Francisco presents, when it said: "We need not here determine whether in the absence of anything in the charter or ordinances forbidding it, such persons or corporations under their general powers, could go on to establish, and operate such works without asking the consent of the city, or whether such action would be unlawful without affirmative permission from the city." From this it seems that the Supreme Court regarded it as at least possible that, where a city could not under its charter grant a franchise, the company could extend its works on conforming with the police regulations of the city. It does seem possible to interpret the wording of Section 19 to this effect. The first clause: "Persons or corporations may establish and operate works for supplying the inhabitants with such services," may be said to be a grant of power from the State to do the acts in question; then is added: "upon such conditions and under such regulations as the municipality may prescribe under its organic law." If, then, under its organic law the city may not prescribe a "condition" in the nature of a street franchise, the water company may establish such works subject only to such "conditions" as the city may prescribe—that is, police regulations as to the manner in which the work may be done.[11] If the water company can lay its mains

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[7] Charter of Los Angeles (1911), Art. I, Secs. 30 and 40.
[8] Assembly Amendment No. 75.
[9] Assembly Amendment No. 69.
[10] Senate Amendment No. 28; see also article by Prof. Jones on "'Municipal Affairs' in the California Constitution," in California Law Review (Jan. 1913, Vol. I, p. 132).
[11] Charter of San Francisco, Art. I, Chap. 1, Sec. 9, Subdivision 9.

subject only to the regulations of the board of public works, then it should have been compelled by mandamus to extend its facilities to serve the applicants. For the courts ordinarily recognize that compliance with such a requirement is merely incidental to the act of serving. In a recent Minnesota case [12] it has been held that where a court directs a public utility to serve, it impliedly directs it to procure any permits necessary to enable it to serve. This case is directly in point here unless we interpret Section 19 to mean that a franchise is an absolute prerequisite to service even though the city has no power under its charter to grant a franchise.

R. W. M.

Parent and Child—Duty of Father to Support Child After Divorce.—In a recent case,[1] the wife had obtained a decree of divorce in Nevada from her husband, a resident of California. The Nevada court awarded the wife the custody of a minor daughter and $100 a month alimony. These awards obviously not being enforceable in this State,[2] after her return to California, she was appointed guardian of the person and estate of the child. She then had the father imprisoned for his failure to furnish the child with necessaries. The Supreme Court of California discharged the prisoner, holding that under Section 196 of the Civil Code, he was under no duty to support the child. The application of this section, declaring that "the parent entitled to the custody of a child must give him support and education suitable to his circumstances," produces an effect certainly unfair to the child.

At common law, the father remains liable for the support of his child, as well after, as before, a divorce. In this country, the matter is generally covered by statutes too often loose and ambiguous, in the application of which the courts are in hopeless confusion. The decisions, however, seem to rest on either one of two general principles: first, that the liability of the parent for support is coincident with his right to the custody and services of his children,[3] and second, that it is not the policy of the law to deprive children of their rights on account of the dissensions of their parents.[4]

Previous to a divorce, the duty of support generally rests upon the father, in spite of a decree awarding custody to the mother.[5] Under the

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[12] State v. Consumers' Power Co. (Oct. 1912), (Minn.), 137 N. W. 1104.

[1] In re McMullin (Jan. 14, 1913), 45 Cal. Dec. 85.

[2] De La Montanya v. De La Montanya (1896), 112 Cal. 101, 44 Pac. 545; Code of Civil Procedure of Cal., Sec. 413; Minor, Conflict of Laws, Sec. 96.

[3] 1 Bishop, Marriage and Divorce, Sec. 557; Gilley v. Gilley (1887), 79 Me. 292, 1 Am. St. Rep. 307.

[4] 2 Bishop, Marriage, Divorce and Separation, Sec. 1223; Kelly v. City of St. Louis (1899), 152 Mo. 596, 54 S. W. 438.

[5] Shields v. O'Reilly (1896), 68 Conn. 256, 36 Atl. 49.